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(3)

No. 84-937

IN THE

Supreme Court of the United States

October Term, 1984

WESLEY K. BELL, individually and d/b/a WES OUTDOOR ADVERTISING CO.,
Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, BRENDAN T. BYRNE, LOUIS J. GAMBACCINI, JOHN J. DEGNAN, DOROTHY ANDRES, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, WILLIAM BURNHAM, JOSEPH CUNNINGHAM, ALAN SAGNER and NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF AND APPENDIX

WESLEY K. BELL
Plaintiff-Appellant, Pro Se
P.O. Box 538
188 Route #72
Manahawkin, New Jersey 08050
(609) 597-3222

February 8, 1985

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Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF AND APPENDIX

Supplemental Statement of Facts
(as per Rule 22-6)

The following "intervening matter" are documents which were not available at the time of Plaintiff-Appellant's last filing.

The property owners of Parcel L2R 31D Egon Kahl and Ede Kahl and Michael and Rita Ackaway, have recently located the following letters from the New Jersey Department of Transportation:

Letter dated February 3, 1975 at Page 1a;
Letter dated March 13, 1975 at Page 3a.

These letters contents clearly support Plaintiff-Appellant's position that the Defendants knew of Plaintiff's permanent property easement, referred to as item #2 of the February 3rd., 1975 letter. Their knowledge was so accurate that the letter referred to the Deed Book #3187, page 1. The letter further advised the Kahls and Ackaways, that in the event that Plaintiff-Appellant Bell did not sign the deed (*which was prepared by the State*) that the check for $12,000.00 would not be forwarded to the Kahls and the Ackaways (see Easement, Page 5a).

The second letter, dated March 13th., 1975, on Page 3a, clearly reveals that the Defendants were aware that Plaintiff Bell refused to sign the "Bargain and Sale Deed" and further that the State would, and did in fact, cancel their agreement to purchase Parcel L2R31D.

The State's Attorney, Nickolas F. Monteforte used "FRAUD UPON THE COURT" before the U.S. District Court, when he Certified on March 29th., 1982, that L2R31D was owned by the State of New Jersey (see Certification, at Page 12a).

Monteforte furthered this FRAUD on September 2nd., 1982 when he prepared a "false affidavit" for Donald Catts and witnessed his signature, then filed it with Federal District Court Judge Thompson, "to deny Plaintiff a trial on the merits" (see Affidavit Page 19a).

Defendants Attorney Nickolas F. Monteforte further compounded this FRAUD in his Brief to the United States Third Circuit Court of Appeals, maintaining this position and repeatedly referred to Judge Thompson's findings in his brief to that Court. These findings were actually based on Monteforte's "Fraud Upon the Court".

The State and Defendants have continually denied Plaintiff-Appellant Bell access to State Public Records, specifically to deny him the opportunity to present his case with full knowledge of all of the relevant facts.

On May 26th., 1977, Plaintiff-Appellant Bell filed a suit under the "Right to Know Law" (see Complaint Page 21a). Defendants then sent letter of July 1st., 1977, pretending to make records available (see letter of 7/1/77 Page 29a).

On August 16th., 1977, Plaintiff served Interrogatories for Documentation of records and related matters (Page 31a) and Defendants immediately filed a Motion for Dismissal (see Page 43a) to prevent Plaintiff from any further discovery. The State filed their Brief Supporting their motion for dismissal on August 11th 1977 (see Page 45a) and Plaintiff filed their Brief Opposing the State's Motion for Dismissal on September 9th 1977 (see Page _____a) the Right to Know Complaint was then dismissed on September 16th 1977 (see Order Page 66a).

Supplemental Argument

This is a case of "Oppressive Government". Oppressive Governments are built upon secrecy. In this case, the secrecy has effectively deprived Plaintiff-Appellant of his protected rights.

From the very first confrontation between Defendants and Plaintiff, all State records were kept secret. Public records became "private information" for this Plaintiff. Plaintiff has continually, up to and including this date, been denied public access to said records (Page 45a). If the Defendants had permitted Plaintiff to review the public Records, Plaintiff would have been in a position to document the facts which the recently discovered letters of February 3rd., 1975 (Page 1a) and March 13th., 1975 (Page 3a) clearly point out . . . that Defendants "knew that the State did not own" Parcel L2R31D. The denial of a "trial on the merits" has prevented Plaintiff from successfully defending the ownership of his properties and business.

A trial on the merits after full discovery and disclosure in this case, will clearly enable a jury to evaluate all of the issues and make a fair, factual finding, to put an end to the seventeen year siege of "oppressive" acts of Defendants.

Conclusion

This additional documentation, supplied in this Supplemental Brief and Appendix, clearly documents FRAUD UPON THE COURT by Defendants' Attorney, Nickolas F. Monteforte, Deputy Attorney General.

Respectfully submitted,

WESLEY K. BELL, *Pro Se*
P.O. Box 538
188 Route #72
Manahawkin, New Jersey 08050
(609) 597-3222

Certificate of Service

I HEREBY CERTIFY that the foregoing Supplemental Brief and Appendix has been mailed to the opposing counsel, duly addressed to their offices, by Certified Mail.

JAMES J. CIANCIA, Esquire
Assistant Attorney General
Transportation Section
Hughes Justice Complex C.N. 112
Trenton, New Jersey 08625

JOHN SAHRADNICK, Esquire
Berry, Kagen, Privitera & Sahradnick
214 Hooper Avenue — P.O. Box 757
Toms River, New Jersey 08753

and to the Solicitor General, Department of Justice, Washington, D.C. 20530, with the proper postage affixed thereto, this 8th day of February, 1985.

WESLEY K. BELL, *Pro Se*
P.O. Box 538
188 Route §72
Manahawkin, New Jersey 08050
(609) 597-3222

APPENDIX

Letter Dated February 3rd., 1975

(Seal)
STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
Trenton, New Jersey 08625
February 3, 1975

Alan Sagner
Commissioner

In Reply Please Refer To
Route:72
Section:7
Parcel: L2R31D
Kahl, Ackaway

Mr. Michael Ackaway
368 Hilltop Road
Toms River, New Jersey

Dear Mr. Ackaway:

The State Treasurer has issued a warrant check for $12,000.00, No. A711800, dated January 29, 1975, payable to Egon Kahl & Ede Kahl and Michael & Rita Ackaway, in settlement of the claim against the State of New Jersey by reason of the conveyance to the State of the above designated parcel. This check will be forwarded upon the disposition of the following.

1. Proof to be furnished of payment of the 1975 real estate taxes to the date of possession.

2. Bargain and Sale Deed to Be Produced:
From Westley Kenneth Bell, for easement as contained in DB3187 page 1.

Letter Dated February 3rd., 1975.

3. Notification of acceptance of possession to be furnished this office by the Bureau of Property and Relocation. This can be accomplished by notifying Mr. Paul Pearson, Freehold, NJ, at the following telephone number: 201-431-4500.

4. The enclosed Order of Dismissal to be executed and returned to this office.

Very truly yours,

PAUL J. HOWARD
PAUL J. HOWARD, *Supervisor*
Settlement Section
Bureau of Titles
609-292-3222

PJH:mef
Enclosure

Letter Dated March 13th., 1975

(Seal)
STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
Trenton, New Jersey 08625
March 13, 1975

Alan Sagner
Commissioner

In Reply Please Refer To:
Route:72
Section: 7
Parcel: L2R31D
Kahl, *et al.*

Mr. Michael Ackaway
368 Hilltop Road
Toms River, New Jersey

Dear Mr. Ackaway:

Reference is made to the easement over the subject parcel held by Westley Kenneth Bell. It is my understanding that Mr. Bell has refused to execute a deed releasing his leasehold interest into said parcel to the State of New Jersey.

If Mr. Bell's position is unchanged, this office has no other recourse but to rescind the agreement entered into between yourself, your wife, Rita, Mr. and Mrs. Kahl, and the State of New Jersey. Would you be kind enough to advise this office as to Mr. Bell's present attitude in this matter.

Letter Dated March 13th., 1975.

If Mr. Bell refuses to release his leasehold interest, would you be kind enough to return to this office the *unsigned* Order of Dismissal forwarded to you under my correspondence of February 3, 1975. Enclosed for your convenience find self-addressed envelope.

Very truly yours,

PAUL J. HOWARD
PAUL J. HOWARD, *Supervisor*
Settlement Section
Bureau of Titles

PJH:mef
Enclosure

Easement Dated January 7th., 1972

(Book 3187 Page 1)

AGREEMENT

THIS INDENTURE, made this 7th day of January, 1972, is made by and between EGON KAHL and EDE KAHL, his wife, residing at 239 Boyden Avenue, Maplewood, New Jersey, and HARRY BALDASSARRE and REINELDA BALDASSARRE, his wife, residing at Chancellor Avenue, Irvington, New Jersey, and MICHAEL ACKAWAY and RITA ACKAWAY, his wife, with a mailing address of Route #37 and Berry Avenue, Toms River, New Jersey, hereinafter designated as the Grantors, and WESLEY KENNETH BELL residing at Route #72, Manahawkin, Stafford Township, hereinafter designated as the Grantee, is made for and in consideration of ONE DOLLAR ($1.00) and other good and valuable consideration together with the mutual covenants contained herein and is made under the following terms and conditions, to wit:

1. The Grantors hereby bargain, sell, grant and convey unto the said Grantee a permanent easement across a portion of a parcel of land conveyed to the Grantors hereinabove named by deed from Gustav Foster and Margaret Foster, his wife, dated November 24, 1971 and intended to be recorded prior to or simultaneously with the recording of this instrument. The within created easement is more particularly described in "Schedule A" which is attached hereto and made a part hereof and gives the Grantee the right to use said property for the purpose of the erection and maintenance of one double faced straight or "V" type bill board to be erected at the sole expense of the

Grantee. The Grantee is also given the right of pedestrian and vehicular access across the property described in "Schedule A" which is attached hereto for the purpose of access for maintenance and erection of said sign or bill board.

2. The within created easement is expressly subject to the condition that the Grantee must erect a bill board or sign within fifteen (15) years (Book 3187 Page 2) after the date of the execution of this agreement or the said easement shall terminate, be null and void and of no effect whatsoever. The condition shall, however, in no way effect the right of the Grantee to enter upon the lands subject to this easement for maintenance of the said sign once it is erected.

3. The Grantee hereby agrees to pay the pro rata share of the real estate taxes which shall forthwith be assessed on the vacant land, based upon the frontage used by the Grantee and the Grantee will further agree to pay any additional taxes which may be assessed on the said sign or bill board.

3-B. (See Schedule B attached).

4. Where ever in this instrument any party or parties shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words heirs, executors, administrators, personal or legal representative and assigns had been inserted after each and every such designation.

Easement Dated January 7th., 1972.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year aforementioned.

EGON KAHL [L. S.]
EDE KAHL [L. S.]

Colin R. Hazeltine

HARRY C. BALDASSARRE [L. S.]
REINELDA BALDASSARRE [L. S.]

Colin R. Hazeltine

MICHAEL ACKAWAY [L. S.]
RITA ACKAWAY [L. S.]

Colin R. Hazeltine

WESLEY KENNETH BELL [L. S.]

Colin R. Hazeltine

Easement Dated January 7th., 1972.

(Book 3187 Page 3)

SCHEDULE "A"

BEGINNING at a point in the southwesterly sideline of the present right-of-way of New Jersey Route No. 72, said point being distant south 51 degrees 45 minutes .00 seconds east 946.96 feet from the intersection of the southwesterly sideline of New Jersey Route No. 72 and the southeasterly sideline of Jennings Road (said point also being the northeasterly corner of Lot 31 in Block 147 according to the tax map of Stafford Township and running thence (1) south 32 degrees 45 minutes .00 seconds west a distance of 100 feet to a point thence (2) north 51 degrees 45 minutes .00 seconds west and parallel with the said southwesterly sideline of New Jersey Route No. 72 a distance of 25 feet to a point thence (3) north 32 degrees 45 minutes .00 seconds east and parallel with the first course hereinabove described a distance of 100 feet to a point in the said southwesterly sideline of New Jersey Route No. 72 and thence (4) south 51 degrees 45 minutes .00 seconds east along the said southwesterly sideline of New Jersey Route No. 72 a distance of 25 feet to a point said point being the point and place of beginning.

Easement Dated January 7th., 1972.

(Book 3187 Page 4)

"SCHEDULE B"

3-B. Grantee hereby agrees that any bill board to be erected shall not obstruct from the view of the travelling public using Route #72, a building or structure erected by Grantors or as reserved by Grantors by plan to be submitted to Grantee within fifteen (15) days of notification to Grantors of the intention of Grantee to commence the erection of said bill board, provided that both parties hereto agree that nothing contained herein shall preclude Grantee from erecting a bill board at a height of twenty (20) feet from ground level nor shall Grantee erect a bill board with its base less than twenty (20) feet from ground level.

(Book 3187 Page 5)

ACKNOWLEDGMENT

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss.

BE IT REMEMBERED, that on this 4th day of January, in the year of our Lord one thousand nine hundred and seventy-two, before me, the undersigned authority, personally appeared Egon Kahl and Ede Kahl, his wife, who I am satisfied are the Grantors in the within agreement and acknowledged that they signed, sealed and delivered the same as their act and deed. All of which is hereby certified.

COLIN R. HAZELTINE
An Attorney-at-Law
of New Jersey

Easement Dated January 7th., 1972.

ACKNOWLEDGMENT

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss.

BE IT REMEMBERED, that on this 7th day of January, in the year of our Lord one thousand nine hundred and seventy-two, before me, the undersigned authority, personally appeared Harry C. Baldassarre and Reinelda Baldassarre, his wife, and Michael Ackaway and Rita Ackaway, his wife, who I am satisfied are the Grantors in the within agreement and acknowledged that they signed, sealed and delivered same as their act and deed. All of which is hereby certified.

COLIN R. HAZELTINE
An Attorney-at-Law
of New Jersey

ACKNOWLEDGMENT

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss.

BE IT REMEMBERED, that on this 7th day of January, in the year of our Lord one thousand nine hundred and seventy-two, before me, the undersigned authority, personally appeared Wesley Kenneth Ball who I am satisfied is the Grantee in the within agreement and acknowledged that he signed, sealed and delivered same as his act and deed. All of which is hereby certified.

COLIN R. HAZELTINE
An Attorney-at-Law
of New Jersey

Easement Dated January 7th., 1972.

005103
RECORDED
OCEAN COUNTY CLERK'S
OFFICE
'72 FEB 7 PM 2 01
Book 3187 Page 1 of Deeds
(Signature Illegible)
Clerk

Prepared By: R
Shackleton and Kelly
Counsellors at Law
22nd St. and Long Beach Blvd.
Ship Bottom, New Jersey 08008

CERTIFICATION

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss.

I, E. KENNETH BURDGE, COUNTY CLERK OF THE COUNTY OF OCEAN, DO HEREBY CERTIFY THAT the foregoing is a true, full and correct copy of a certain AGREEMENT recorded in my office in Book 3187 of Deeds on Page 1 & c.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said County of Ocean at Toms River, New Jersey, this 30th day of January, A.D., Nineteen hundred and seventy-eight.

E. KENNETH BURDGE
County Clerk
County of Ocean

By: IDA M. DEMARCO
(Seal) *Special Deputy Clerk*
Ida M. DeMarco

Fraudulent Certification Dated March 29, 1982

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Defendants
Richard J. Hughes Justice Complex
CN 114
Trenton, New Jersey 08625
(609) 292-5709

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

v.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Fraudulent Certification Dated March 29, 1982.

CERTIFICATION

NICKOLAS F. MONTEFORTE, of full age, says:

1. On November 8, 1977, the Department of Transportation served upon Wesley K. Bell eight notices of eight separate sign encroachments on State right of way. Those notices, copies of which are attached as Exhibit "K," were as follows:

Sign Encroachment	*General Property Parcel Map Parcels Nos.*
3SE9-86	L-11B
3SE9-87	L-22, 23 & 23B*
3SE9-88	L-4B
3SE9-89	L-17G
3SE9-90	L-17D
3SE9-91	L-22B
3SE9-92	L-22C
3SE9-93	L2R31D

2. On December 19, 1977, Michael Malin, Esquire, attorney for Wesley K. Bell, wrote to the Department requesting that the Notices of Encroachments, copies of which are attached as Exhibit "L", be withdrawn or, in the alternative, that a hearing be granted.

3. Concurrently, on or about December 19, 1977, Wesley K. Bell, through his attorney Mr. Malin, instituted Civil Action No. 77-1531 in the United States District Court.

4. Also, concurrently, the case of *Bell v. Kohl* was proceeding in the Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. C-2643-73.

---

* This parcel is not involved in the matter now before the Court.

In that action, Bell was attacking, *inter alia*, the constitutionality of the Eminent Domain proceeding previously instituted by the Department of Transportation against properties in which he claimed an interest.

5. Although it was the opinion of the Department that the encroaching signs were not the subject of a valid permit, and were on State property, and, therefore, were not within the purview of *N.J.A.C.* 16:41-8.11 with respect to the hearing entitlement provisions of *N.J.A.C.* 16:41-8.12, copies attached as Exhibit "M," nevertheless because of the various claims presented by Mr. Bell in the civil action, it was decided that a hearing would be desirable under the circumstances.

6. Thereafter on January 10, 1978, Mr. Bell, via his attorney, Mr. Malin, was notified that a hearing would be held on January 31, 1978, copy attached as Exhibit "N."

7. Subsequently, on January 17, 1978, Mr. Malin wrote to me advising that he intended to file a motion to restrain the hearing and requesting that I agree to hold up the hearing, copy attached as Exhibit "O."

8. On January 25, 1978, I replied to Mr. Malin advising him to seek adjournment from the hearing examiner and that I would not consent to it but also would not oppose his request, copy attached as Exhibit "P."

9. In early January 1978, Wesley K. Bell moved in United States District Court to enjoin the hearing.

Fraudulent Certification Dated March 29, 1982.

10. On January 31, 1978, at the hearing Mr. Bell, through his attorney, took the position that the Commissioner of Transportation could not proceed with the hearing and stated that the subject of the hearing was before both the United States District Court (Civil Action No. 77-1531) and the Appellate Division of the Superior Court of New Jersey (Docket No. A-3891-76). Transcript p. 6, L. 20 through p. 8, L. 20, copies attached as Exhibit "Q."

11. At the hearing, I represented the New Jersey Department of Transportation. The hearing proceeded until 4:40 p.m. on January 31, 1978. Contrary to the position taken by the plaintiff, the hearing was not adjourned because of a request made either by the Department of Transportation or me as their counsel. It was adjourned at that time due to the lateness of the hour, and because Mr. Malin had to "make a train." (Transcript p. 129, L. 21 through p. 130, L. 9, copies attached as Exhibit "R.") Former Attorney General John J. Degnan was not present at this hearing. He had been sworn in as Attorney General less than two weeks earlier.

12. The hearing was adjourned without date. To the best of my knowledge, Former Attorney General Degnan knew of neither the hearing nor the subject matter of said hearing.

13. It is my recollection that Mr. Malin did not wish the matter to resume until after he had received and read the transcript and until he had returned from a trip to the Soviet Union which he had planned to take in March of 1978. He was to contact me with respect to a continuance date for the hearing.

Fraudulent Certification Dated March 29, 1982.

14. On February 8, 1978, Mr. Malin requested that the State produce certain witnesses at the next hearing date, copy attached as Exhibit "S."

15. Mr. Malin's request was denied by letter dated March 9, 1978, copy attached as Exhibit "T."

16. I never heard from Mr. Malin again with respect to the hearing. I did not know when he returned from vacation, nor did he advise me that he was at any time ready to proceed with the matter or advise me of a date on which the matter could be rescheduled. This action was consistent with the move to enjoin the hearing.

17. Once the hearing was assigned to a hearing examiner in December 1977, the defendant, Dorothy L. Andres, took no part in the proceedings. She neither adjourned the matter nor did she have the authority to adjourn. Further, she had nothing whatsoever to do with the rescheduling.

18. In due course, the issues which were before the hearing examiner and which according to Mr. Malin were exactly the same as those before the United States District Court and the Appellate Division of the Superior Court of New Jersey (Hearing Transcript, *supra*) were decided in favor of the Department of Transportation by those courts. As a result of the decisions, which applied to all parcels (except L2R31D which had not been a part of those actions), it became absolutely clear that ownership of the land was vested in the State of New Jersey, Department of Transportation. In addition, the location of the signs on the property has been admitted by Wesley K. Bell in his verified petition for temporary restraints in this action. Hence, it is clear that if the hearing were to be resumed it could reach no conclusion

that has not already been decided. It is just as clear that, as a matter of law, no permit may be issued for these signs and that they must be removed.

19. Regarding parcel E31B/L2R31D, Department records revealed a deed dated December 5, 1974, recorded January 8, 1975, from Egan Kahl, *et al.*, into the State, Book 3433, Page 225, Ocean County. However, there was a previously recorded contract for sale of the same parcel from the prior owner, Gustav Foster, to Wesley K. Bell. The contract was dated December 26, 1968, and recorded on December 30, 1968, in Book 2865, Page 400, Ocean County. Foster conveyed to Kahl, *et al.*, by deed dated November 24, 1971, recorded February 8, 1972, in Book 3186, Page 797.

It was the Department's understanding that there had been a breach of the 1968 contract by Mr. Bell and that the contract was invalid. Nevertheless, while asserting title in the E31B/L2R31D property, it was recognized that Mr. Bell should be given the opportunity to produce any and all documentation to show entitlement to a permit for the sign located on E31B/L2R31D. Both the November 13, 1979, letter, Exhibit "F", Andres Affidavit, and the February 5, 1980, letter, attached hereto as Exhibit "U," requested that he provide this documentation. Plaintiff has failed to respond to either letter and it is submitted that no such documentation can be produced.

20. Attached for the convenience of the court are the following documents (respectively Exhibits "V" through "BB") indicating proof of ownership of the subject

parcels by the New Jersey Department of Transportation:

a. Complaint, Declaration of Taking or *Lis Pendens*, where applicable, Order for Possession, Report of Commissioners, and, if appealed, a copy of the Judgment on Appeal for parcels L-11B, L-4B, L-17G, L-17D, L-22B and L-22C.

b. Copy of Deed dated December 5, 1974, recorded January 8, 1975, from Egan Kahl, *et al.*, to New Jersey Department of Transportation.

The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

NICKOLAS F. MONTEFORTE

DATED: March 29, 1982

Affidavit of Donald Catts, Dated September 2nd., 1982

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Defendants
Richard J. Hughes Justice Complex
CN 114
Trenton, New Jersey 08625
(609) 292-5709

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES, and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

AFFIDAVIT OF DONALD CATTS

STATE OF NEW JERSEY }
COUNTY OF MERCER } ss.

DONALD CATTS of full age, being duly sworn according to law, deposes and says:

1. I am employed by the New Jersey Department of Transportation in the present capacity of Senior Engineer and have been employed by DOT for the past 19 years.

Affidavit of Donald Catts, Dated September 2nd., 1982.

2. During the latter part of 1977, I served as Chief of a Field Party assigned to survey the location of the Wes Outdoor Advertising Company signs which are the subject of the present action and which were also the subject of Violation Notices sent out in November, 1977.

3. As a result of that survey a map plotting of each encroachment was made on the existing State Highway Department General Property Parcel Map applicable to each parcel.

4. True and exact copies of these maps showing each parcel and its respective encroachment are attached hereto as Exhibits A through D.

5(a) Parcel L11B appears on Exhibit A: General Property Parcel Map Route 72, Section 6, Sheet 3 of 7.

(b) Parcel L4B appears on Exhibit B: General Property Parcel Map Route 72, Section 7, Sheet 1 of 11.

(c) Parcels L17G, L17D, L22B and L22C appear on Exhibit C: General Property Parcel Map Route 72, Section 7, Sheet 2 of 11.

(d) Parcel L2R31D appears on Exhibit D: General Property Parcel Map Route 72, Section 7, Sheet 3 of 11.

DONALD D. CATTS
Donald Catts

Sworn and subscribed before me
this 2nd day of September, 1982

NICKOLAS F. MONTEFORTE
Nickolas F. Monteforte
An Attorney-at-Law of New Jersey

Right-to-Know Action, Dated May 26th., 1977

ORIGINAL FILED
MAY 26 1977

Certified to be a true copy of the original on file in my office. This notice is given in compliance with the rules of court.

ILLEGIBLE
Clerk

Richard S. Haines
HAINES, SCHUMAN & BUTZ
A professional Corporation
214 Washington Street
Toms River, N.J. 08753
(201) 349-4400
Attorneys for Plaintiff

Attorney(s): WHITE AND WILLIAMS
Michael H. Malin
Office Address & Tel. No.: 17th Floor—1234 Market Street
Philadelphia, Pa. 19107
(215) 854-7034
Attorney(s) for Plaintiff

Right-to-Know Action, Dated May 26th., 1977.

SUPERIOR COURT OF NEW JERSEY

Law Division
Mercer County
Docket No. L 38402 76
CIVIL ACTION
P.W.

WESLEY K. BELL, Citizen of Manahawkin, Ocean County, N.J.,

Plaintiff,

vs.

STATE OF NEW JERSEY and JOHN C. KOHL, Commissioner of Transportation, State of N.J., WILLIAM KINGSLEY, Director, Division of Taxation, New Jersey Department of Transportation State of New Jersey,

Defendant.

Verified Complaint in Lieu of Prerogative Writ

WESLEY K. BELL, residing at Route 72, Manahawkin, Ocean County, New Jersey, by way of Complaint, states as follows:

1. Plaintiff is a bona fide Citizen and resident of Stafford Township, Ocean County, New Jersey.

2. State of New Jersey is represented in this action by John C. Kohl, Commissioner of Transportation and William Kingsley, Chief, Division of Taxation,

Department of Transportation. Kohl and Kingsley are the custodians of the public records sought herein.

3. WESLEY K. BELL is engaged in the business of outdoor advertising along Route 72 and various other areas of the State of New Jersey.

4. Beginning in 1967 and proceeding through 1974 the State of New Jersey through the Department of Transportation condemned certain properties along Route 72 between its intersection with the Garden State Parkway and Long Beach Island using both federal and state funds under Highway Beautification Acts. Such condemnations were in plaintiff's opinion selective and not in keeping with guidelines and standards for highway beautification.

5. The Administrative plan for highway beautification along Route 72 was never disclosed to the public.

6. Plaintiff lives along Route 72 in the area in question.

7. On the 24th day of February, 1977, he appeared at the office of the New Jersey Department of Transportation, Outdoor Advertising Bureau and requested the right to see the records pertaining to the condemnations along Route 72 under the Highway Beautification Act and all permit and application files for outdoor advertising along Route 72. Specifically he requested those pertaining to the condemnations of property owned by or leased by Plaintiff as well as overall plans for condemnations under the Highway Beautification Act in the general area in Stafford Township. He was denied access to the records which are public records including those records which would indicate why certain parcels were condemned and others

apparently similarly situated not so condemned. He also requested the right to see the state applications for federal funds for highway beautification from 1965 to date but was denied access to same.

8. Such records of the plan of beautification, condemnations and guidelines for same are required to be kept by Federal and State Law and are public records within the meaning of New Jersey Statutes Annotated 47:1A-1 *et seq.*

9. The relief requested requires the performance of a purely ministerial act.

10. Plaintiff has offered and will pay for copies of the aforesaid records in accordance with N.J.S.A. 47:1A-2.

WHEREFORE Plaintiff demands an order requiring the State of New Jersey by John C. Kohl and William Kingsley, permitting him to inspect and copy all documents pertaining to the administration of the so-called "New Jersey Highway Beautification Act" commencing in 1967 and including all records with respect to condemnations started, plan of beautification, internal memoranda with respect to funds available, how funds were expended, total payments made to all parties and any and all plans for future condemnations along Route 72 in Ocean County, New Jersey, the guidelines for condemnations and all permits and permit applications referring to same for outdoor advertising in Stafford Township, New Jersey from 1967 to date.

RICHARD S. HAINES
Richard S. Haines

MICHAEL H. MALIN
Michael H. Malin

Right-to-Know Action, Dated May 26th., 1977.

WESLEY K. BELL, being duly sworn according to law, deposes and states that the averments of the complaint are true and correct to the best of his knowledge, information and belief and that he makes this affidavit knowing that the penalties for perjury attach to any false statement.

WESLEY K. BELL
Wesley K. Bell

Sworn to and subscribed
this 24th day of May 1977

RICHARD S. HAINES
Attorney of N.J.

Right-to-Know Answer, Dated June 30th., 1977

William F. Hyland
Attorney General of New Jersey
Attorney for Defendants
1035 Parkway Avenue
Trenton, New Jersey 08625
(609) 292-5948

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

Docket No. L-38402-76 PW
Civil Action

WESLEY K. BELL, Citizen of Manahawkin, Ocean County, N.J.,

Plaintiff,

vs.

STATE OF NEW JERSEY and JOHN C. KOHL, Commissioner of Transportation, State of N. J., WILLIAM KINGSLEY, Director, Division of Taxation, New Jersey Department of Transportation State of New Jersey,

Defendants.

ANSWER

Right-to-Know Answer, Dated June 30th., 1977.

By way of answer to the plaintiff's complaint, defendants say:

1. Defendants have no knowledge as to the opinions, allegations and other declarations set forth in Paragraph 1 and leave plaintiff to his proofs.

2. Defendants deny the allegations set forth in Paragraph 2.

3. Defendants have no knowledge as to the opinions, allegations and other declarations set forth in Paragraph 3 and leave plaintiff to his proofs.

4. Defendants admit the allegations set forth in Paragraph 4, but deny that the exercise of the power of Eminent Domain was, in any respect, improper.

5. Defendants deny the allegations set forth in Paragraph 5.

6. Defendants have no knowledge as to the opinions, allegations and other declarations set forth in Paragraph 6.

7. Defendants admit that plaintiff appeared at the New Jersey Department of Transportation on February 24, 1977, seeking to examine certain records of the Outdoor Advertising-Permits Section, but deny the remaining opinions, allegations and other allegations set forth in Paragraph 7.

8. Defendants have no knowledge as to the opinions, allegations and other declarations set forth in Paragraph 8.

9. Defendants deny the allegations set forth in Paragraph 9.

Right-to-Know Answer, Dated June 30th., 1977.

10. Defendants admit the allegations set forth in Paragraph 10 to the extent they pertain to the records in fact requested by plaintiff.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim is barred by the Statute of Limitations.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants
By: RICHARD L. VOLIVA, JR.
Richard L. Voliva, Jr.
Deputy Attorney General

Offer to Examine Records, Dated July 1st., 1977

(Seal)
STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
Division of Law
Transportation Section
1035 Parkway Avenue
Trenton 08625

William F. Hyland
Attorney General

Robert J. Del Tufo
First Assistant Attorney General

Stephen Skillman
Assistant Attorney General
Director

Richard L. Rudin
Deputy Attorney General
Section Chief, Highways

July 1, 1977

Michael H. Malin, Esq.
WHITE & WILLIAMS
17th Floor
1234 Market Street
Philadelphia, Pennsylvania 19107

Re: Wesley K. Bell, Citizen of Manahawkin, Ocean County, New Jersey, vs. State of New Jersey; et al.
Docket No. L-38402-76 P.W.

Dear Mr. Malin:

I am hereby confirming my representation made to you during our telephone conversation of yesterday. If you will provide the Department of Transportation with a list of the documents and files you wish to examine, pursuant to the right-to-know law, I shall in good faith see to it that you have the opportunity to examine this

Offer to Examine Records, Dated July 1st., 1977.

material. Further, if you are denied access to any material, you will be so advised in order that you may pursue whatever action you deem necessary.

May I hear from you.

Very truly yours,

WILLIAM F. HYLAND
Attorney General of New Jersey

By: RICHARD L. VOLIVA, JR.
Richard L. Voliva, Jr.
Deputy Attorney General

RLV:lt
cc: Richard S. Haines, Esq.

Interrogatories for Information,
August 16th., 1977

RECEIVED
AUG 16 1977
(Signature Illegible)

Richard S. Haines, Esquire
HAINES, SCHUMAN & BUTZ
a Professional Corporation
214 Washington Street
Toms River, N. J. 08753
(201) 349-4400

Michael H. Malin, Esquire
WHITE AND WILLIAMS
17th Floor, 1234 East Market Street
Philadelphia, Pa. 19107
(215) 854-7034
Attorneys for Plaintiff

Interrogatories for Information,
August 16th., 1977.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

Docket No. L-38402-76 PW
CIVIL ACTION

WESLEY K. BELL, Citizen of Manahawkin,
Ocean County, N. J.,

Plaintiff,

vs.

STATE OF NEW JERSEY and JOHN C. KOHL, Commissioner of Transportation, State of New Jersey, WILLIAM KINGSLEY, Director, Division of Taxation, New Jersey Department of Transportation, State of New Jersey,

Defendants.

PRELIMINARY INTERROGATORIES OF
PLAINTIFF ADDRESSED TO DEFENDANTS.

To:
William F. Hyland
Attorney General of New Jersey
1035 Parkway Avenue
Trenton, New Jersey 08625

Attention: Richard L. Voliva, Jr.
Deputy Attorney General

Interrogatories for Information,
August 16th., 1977.

Sirs:

PLEASE TAKE NOTICE that the Plaintiff, WESLEY K. BELL, demands answer from Defendants under oath, or certification to the following interrogatories within the time prescribed by the Rules of Court:

I. *DEFINITIONS AND INSTRUCTIONS*

As used in this request the terms listed below are defined as follows:

A. The term "you" or "your" means each of the defendants to which this request is addressed, including its divisions, departments, affiliates, predecessors (including the Division of Taxation, Department of the Treasury, and the Outdoor Advertising Tax Bureau, State of New Jersey), present or former officers, officials, department heads, employees, agents, attorneys, owners or agents and all other persons acting or purporting to act on their behalf.

B. The term "documents" means all writings of any kind, including the originals and non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including without limitation correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural

records or representations of any kind (including without limitations photographs, charts, graphs, microfiche, microfilm, videotape, recordings, motion pictures) and the electronic, mechanical or electric records or representations of any kind (including without limitations tapes, cassettes, discs, recordings).

C. The term "all documents" means every document as above defined known to you and every such document which can be located or discovered by reasonably diligent efforts. If such document was but is no longer in your possession or subject to your control, state what disposition was made of it and the date of such disposition.

D. The term "person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, department or division, organization or group of natural persons.

E. "Identify", "name" or any other request for information regarding or reference to an individual means to state his full name and present address, his present or last known position or business affiliation, and his position or business affiliation at the time in question.

F. "Area" shall mean along new Route 72 between the Garden State Parkway and Long Beach Island in Stafford Township, N. J.

G. Time period. Unless otherwise stated the time period will be January 1, 1968 to date.

Interrogatories for Information,
August 16th., 1977.

II. *INTERROGATORIES*

The following interrogatories shall be deemed to be continuing in nature and if information is discovered that comes to your attention after these interrogatories are answered which should change or supplement the answers given, demand is hereby made that said information be furnished immediately.

1. Identify all documents which give the reasons why Plaintiff was at any time from 1968 to date refused permits under the Outdoor Advertising Act and attach all documents in support thereof.

2. Identify all applications made by Plaintiff to the Outdoor Advertising Tax Bureau along Route 72 in 1968 and describe and attach such documents.

3. Identify and describe and attach all documents that affected any permits issued by the Township of Stafford to Plaintiff for the erection of billboards along Route 72 or which cancelled such permits.

4. Identify, describe and attach all documents which detail the plan for condemnation along Route 72 between the Garden State Parkway and Long Beach Island in New Jersey.

5. Identify and describe all applications for federal funds for highway beautification along Route 72 in the area.

6. Identify any and all documents which detail the expenditures for this so-called "Highway Beautification Plan" along Route 72 in the area.

Interrogatories for Information,
August 16th., 1977.

7. Identify and describe and attach all internal correspondence with respect to the Highway Beautification Plan described in the Interrogatories above in the area.

8. Identify, describe and attach all internal correspondence and memoranda with respect to the reasons given for the denial of outdoor advertising permits to Wesley K. Bell.

9. Identify and describe all maps and records of all property actually condemned and paid for in the area or any other division or bureau of the State of New Jersey responsible for so-called "highway beautification."

10. Identify and/or attach all correspondence of Stafford Township Zoning Board of Adjustment with respect to outdoor advertising and/or billboard zoning and/or highway beautification along the area.

11. Identify any and all documents including applications for applications made to the State of New Jersey for the issuance of permits for the construction and/or maintenance of outdoor advertising signs within the Township of Stafford made by the plaintiff or any company which plaintiff had an interest in and with respect thereto give the date, number and locations which said application was submitted, whether it was granted or denied, reasons for denial, reasons for granting, or reasons for not acting upon and describe and identify all documents pertaining and/or attach copies thereof.

12. Descibe all documents and/or categories of documents as they are categorized in the files of the

State of New Jersey with respect to the issuance of outdoor advertising permits in the area.

13. Identify any and all documents relating to condemnation actions in Stafford Township on or adjacent to new Route 72 in the area and attach same to your answers hereto.

14. Describe, identify and attach every plan, drawing, survey or document graphically illustrating the proposed condemnations in the area which were made or used by you or the State of New Jersey or any department thereof in connection with the proposed condemnation, or any changes, modifications, or other actions taken by the State with respect to the same and attach copies hereto. If changes were made in any of the above plans from the date in which the condemnation was initiatally proposed to the present, describe such change, give factual legal reasons for the change and attach all documents which describe the change and the reasons therefor.

15. Identify all documents, including permits which pertain to the erection and/or maintenance of outdoor advertising billboards in the Township of Stafford in the area for the period of 1967 to the present and describe and attach the same (January 1, 1967 to the present).

16. Identify any and all documents and/or records which pertain to the enforcement of the Outdoor Advertising Act for the period January 1, 1967 to the present and attach the same hereto.

17. Identify any and all documents which pertain to the enforcement of the Outdoor Advertising Act along Route 72 in the area from January 1, 1967 to the present and describe and attach such documents hereto.

Interrogatories for Information.
August 16th., 1977.

18. Identify and describe all documents relating to enforcement actions against any person other than plaintiff from January 1, 1967 to the present along Route 72 in Stafford Township, New Jersey in the area.

19. Identify and describe and attach hereto all records maintained by the State with respect to:

(a) Plaintiff's businesses or any interest plaintiff has in any business;

(b) Any applications made by plaintiff for license or licenses or license renewals for outdoor advertising in the State of New Jersey;

(c) Applications made by Plaintiff for permits or the renewal of permits for outdoor advertising billboards constructed, maintained or operated by plaintiff in any business in which he had an interest for the Township of Stafford New Jersey;

(d) Any inter-department communications with respect to any of the matters referred to in sub-paragraphs (a), (b), (c) above;

(e) Opinions or recommendations made by counsel concerning any of the matters referred to paragraphs (a), (b), (c) and (d) above;

(f) Communications of the Township of Stafford concerning any of the matters referred to in paragraphs (a), (b), (c), (d) and (e) above;

(g) Any condemnation matters in which plaintiff was named as a party;

(h) Any informal or formal hearings before any agency of the State of New Jersey or any department in the State of New Jersey pertaining to or related to any of the matters referred to in paragraphs (a), (b), (c), (d), (e), (f), and (g) above and attach the same hereto.

20. Identify and describe all records maintained by you with respect to the following:

(a) Herbert Shapiro or any business in which Herbert Shapiro had an interest;

(b) Applications made by Herbert Shapiro for license or license renewal as an Outdoor Advertiser within the State of New Jersey;

(c) Applications made by Herbert Shapiro for permits or the renewal of permits for outdoor advertising billboards constructed, maintained or operated by Herbert Shapiro or any business in which he had an interest within the Township of Stafford, New Jersey;

(d) Inter-departmental communications with respect to any of the matters referred to in sub-paragraphs (a), (b) and (c) above;

(e) Opinions or recommendations made by counsel concerning any of the matters referred to in paragraphs (a), (b), (c) and (d) above.

(f) Communications with the Township of Stafford concerning any of the matters referred to in paragraphs (a), (b), (c), (d) and (e) above;

(g) Any condemnation matters in which plaintiff was named as a party;

(h) Any informal or formal hearings before you, or your department or any department of the State, pertaining to or in any way related to any of the matters referred to in paragraphs (a), (b), (c), (d), (e), and (g) above.

21. Identify, describe and attach hereto every survey, plan, drawing or similar document as contained in the files of the State of New Jersey and in the custody of the Commissioner of Transportation or any defendant herein the following:

(a) the location of the right-a-way first proposed (and any subsequent modifications thereto) for the State's right-a-way through Stafford Township for new Rte. 72;

(b) the location of any outdoor advertising signs along that right-a-way as initially proposed or as subsequently modified;

(c) the name and address of any persons owning property along the proposed right-a-way, as initially proposed or as subsequently modified.

22. Identify, describe and attach hereto all documents pertaining to the first opening of new Route 72.

23. Identify, describe and attach hereto any and all transcripts of testimony given by any employee of the State of New Jersey in any legal matter pertaining to plaintiff.

24. Identify, describe and attach hereto all documents pertaining to any billboards owned by the Plaintiff in the State of New Jersey or anyone acting in its behalf removed or destroyed from January 1, 1967 to date.

Interrogatories for Information,
August 16th., 1977.

25. Identify, describe and attach hereto all records maintained by you with respect to the following:

(a) Lincoln Properties Company or any business in which Lincoln Properties Company had an interest;

(b) Applications made by Lincoln Properties Company for license or license renewal as an Ourdoor Advertiser within the State of New Jersey;

(c) Applications made by Lincoln Properties Company for permits or the renewal of permits for outdoor advertising billboards constructed, maintained or operated by Lincoln Properties Company or any business in which he had an interest within the Township of Stafford, New Jersey.

(d) Inter-departmental communications with respect to any of the matters referred to in sub-paragraphs (a), (b) and (c) above;

(e) Opinions or recommendations made by counsel concerning any of the matters referred to in paragraphs (a), (b), (c) and (d) above.

(f) Communications with the Township of Stafford concerning any of the matters referred to in paragraphs (a), (b), (c), (d) and (e) above;

(g) Any condemnation matters in which plaintiff was named as a party;

(h) Any informal or formal hearings before you, or your department or any department of the State, pertaining to or in any way related to any of the matters referred to in paragraphs (a), (b), (c), (d), (e), and (g) above.

Interrogatories for Information.
August 16th., 1977.

26. Identify, describe and attach hereto all documents pertaining to any grants or permission to Atlantic City Electric Company or any other person to erect high tension electrical lines along new Route 72 in the area.

27. Identify, describe and attach hereto any and all news releases or statements to the press or public announcements concerning any activities of the Plaintiff, billboards maintained by the Plaintiff or actions taken or to be taken by the State with respect to implementing State policies along new Route 72 in Stafford Township.

28. Identify, describe and attach hereto all citations issued to Plaintiff for violation of the Outdoor Advertising Act from January 1, 1967 to date, including all documents which identify the person or persons conducting any investigation.

s/ RICHARD S. HAINES
MICHAEL H. MALIN

Notice of Motion for Dismissal, August 11th., 1977

William F. Hyland
Attorney General of New Jersey
Attorney for Defendant
1035 Parkway Avenue
Trenton, New Jersey 08625
(609) 292-5520

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

Docket No. L-38402-76 P.W.

Civil Action

WESLEY K. BELL, Citizen of Manahawkin, Ocean County, N.J.,

Plaintiff,

vs.

STATE OF NEW JERSEY; *et al.*,

Defendant.

NOTICE OF MOTION FOR DISMISSAL

Notice of Motion for Dismissal,
August 11th., 1977

To:

Richard S. Haines, Esq.
HAINES, SCHUMAN & BUTZ, ESQS.
214 Washington Street
P.O. Box 608
Toms River, New Jersey 08753

PLEASE TAKE NOTICE that on Friday, August 19, 1977, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, the undersigned will make application to the Superior Court of New Jersey, Law Division, at the Mercer County Court House in Trenton, New Jersey, for an Order of Dismissal of the complaint in the within matter. The defendants will rely upon the attached brief and appendix in support of the motion.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants
By: RICHARD L. VOLIVA, JR.
Richard L. Voliva, Jr.
Deputy Attorney General

State's Brief in Support of Motion, August 11, 1977

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

Docket No. L-38402-76 PW
Civil Action

WESLEY K. BELL, Citizen of Manahawkin, Ocean County, N. J.,

Plaintiff,

vs.

STATE OF NEW JERSEY and JOHN C. KOHL, Commissioner of Transportation, State of N. J., WILLIAM KINGSLEY, Director, Division of Taxation, New Jersey Department of Transportation State of New Jersey,

Defendants.

BRIEF IN SUPPORT OF MOTION TO DISMISS

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants
1035 Parkway Avenue
Trenton, New Jersey 08625

RICHARD L. VOLIVA, JR.
Deputy Attorney General
On the Brief

State's Brief in Support of Motion,
August 11, 1977.

PRELIMINARY STATEMENT

In the within action, filed under the Right to Know Law, *N.J.S.A.* 47:1A-1, *et seq.*, and pursuant to the provisions of *R* 4:69-1, *et seq.*, plaintiff seeks an inspection order permitting him to examine and copy a voluminous quantity of records belonging to the Departments of Transportation and Treasury. These records are concerned with all aspects of the planning and right-of-way acquisition phases of the Route 72 widening and landscape projects in Ocean County and, the outdoor advertising license, and permit activities within the jurisdiction of the State since 1967, along Route 72. This documentation is identical with that being sought through various means of discovery, including interrogatories, in *Wesley K. Bell, t/a Wes Outdoor Advertising Co. v. Department of Transportation, State of New Jersey*, Docket No. C-2643-73, in the Superior Court, Chancery Division, Ocean County.

This action arose on February 24, 1977, when the plaintiff appeared at the New Jersey Department of Transportation, Outdoor Advertising Section demanding to see certain State records. This appearance and request was made without prior notice, not to the custodian of the records and was verbal in nature. The Department was not allowed a reasonable opportunity to evaluate the request from an administrative standpoint; *i.e.*, determine what records were involved, whether they were subject to inspection and to schedule an appointment for inspection. However, the demand was, in fact, made with the knowledge of and upon the advice of counsel and, was made within the scope of the

chancery action. Further, the State's motion to dismiss and the plaintiff's cross-motion to dismiss, which were both concerned with the production of the same information sought herein, were scheduled and heard the very next day, February 25, 1977.

The chancery action was initiated by plaintiff seeking relief from outdoor advertising sign removal notices issued by the Department of Transportation, the issuance of sign permits, the retroactive vacation of long completed condemnation actions and, damages as a result of alleged wrongful interferences with his business operations. The plaintiff pursued discovery of a massive amount of documentation, including that which he seeks herein. Based upon arguments setting forth defenses under the immunity and notice provisions of the Tort Claims Act, *N.J.S.A.* 59:2-1, *et seq.*, the lack of jurisdiction by the Chancery Division over the review of Administrative agency action and the doctrine of *res judicata*, the State was ultimately successful in obtaining a dismissal of the chancery action (Da1-Da3). However plaintiff appealed the dismissal to the Appellate Division on June 7, 1977, Docket No. A-3891-76, including and *specifically* from Paragraph 6 of the Order "(6) Plaintiff's crossmotion for dismissal on the grounds that defendants failed to provide discovery is denied with prejudice as being moot in light of the granting of defendants' motion for dismissal." (Da4-Da7).

Plaintiff's action herein, although filed under the Right to Know Law, *N.J.S.A.* 47:1A-1, *et seq.*, in reality seeks production of the same documentation sought in the previously existing chancery action, of which it is factually a part and, which demands for discovery are

now being pursued before the Appellate Division. Clearly, this constitutes a duplication of actions as far as production of documents is concerned and, is a violation of the "single controversy" doctrine as applied to the Right to Know Law. Therefore, the matter should be dismissed.

In addition to constituting a mere duplication of the discovery demands of the previously existing chancery action, the within action duplicates a portion of the discovery demands being made in an action subsequently filed by Bell against the Department of Transportation and others in the United States District Court for the District of New Jersey, Docket No. 77-1531. Obviously, the plaintiff is attempting to utilize the Right to Know Law as a weapon in a litigation war with the State and as a means of subverting the discovery rules in the other two actions. This must not be tolerated.

ARGUMENT

POINT I

THE COMPLAINT SHOULD BE DISMISSED AS IT SEEKS RELIEF THAT CAN READILY AND MORE EXPEDITIOUSLY BE PURSUED IN THE PRE-EXISTING ACTION, AND WOULD CONSTITUTE A VIOLATION OF THE "SINGLE CONTROVERSY" DOCTRINE.

In the ordinary instance, a request for inspection pursuant to the Right to Know Law, *N.J.S.A.* 47:1A-1, *et seq.*, that has been denied, assuming *arguendo* the requested records are subject to inspection thereunder, would properly warrant an action in lieu of prerogative

writ seeking an inspection order. However, there are limitations upon resorting to such actions. One of the limitations is the "single controversy" doctrine. This precludes compelling inspection of records under the Right to Know Law by means of an action in lieu of prerogative writ when there is a pre-existing action pending in which a request for production can be "... readily and more expeditiously..." made. *Irval Realty v. Bd. of Pub. Util. Commissioners,* 61 N.J. 366, 376 (1972). Such are the circumstances in the matter at bar.

The plaintiff's demand for records herein is not only more reasonably made in the previously existing chancery action, but was already made therein in discovery. In the within action he seeks a variety of substantial records concerning "... the administration of the so-called 'New Jersey Highway Beautification Act' ..." along Route 72 in Ocean County. These records are identical with those sought per interrogatories served in the chancery action. Specifically, he demands records regarding "... condemnations started ..." which were included in interrogatories Nos. 18, 26, 30, 36, 41, 42, 43, 46, 53 and 55 (Da18, 21, 22, 23, 24, 25, 26, 30, 31, 33, 34, 35, 36, 37, 41, 42 and 43); "... plan of beautification ..." which were included in interrogatories Nos. 36, 37, 41, 42, 43, 53, 55 and 60 (Da30, 31, 32, 33, 34, 35, 41, 42 and 45); "... internal memoranda with respect to funds available, how funds were expended, total payments made to all parties ..." which were included in interrogatories Nos. 36, 41, 42, 43, 53, 55 and 61 (Da30, 31, 33, 34, 35, 41, 42, 43, 45 and 46); "... any and all plans for future condemnations along Route 72 in Ocean

County . . ." which were included in interrogatories Nos. 41, 42, 53 and 55 (Da33, 34, 41, 42 and 43); ". . . the guidelines for condemnations . . ." which were included in interrogatories Nos. 30, 41, 42, 43, 53, 55 (Da23, 24, 25, 26, 33, 34, 35, 41, 42 and 43); and ". . . all permits and permit applications referring to same for outdoor advertising in Stafford Township, New Jersey from 1967 to date," which were included in interrogatories Nos. 11, 12, 25, 27, 30, 31, 32, 33, 34, 35. 36, 41, 42, 46, 49, 51, 54, 56, 57, 59 and 64 (Da14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 36, 37, 39, 40, 41, 42, 43, 44, 45, 47 and 48). Although answers to interrogatories were not submitted because the action was dismissed, plaintiff's Notice of Appeal specifically preserved its claim for the records (Da4-Da7). Thus, the demand for records has already been made in the chancery action and is currently before the Appellate Division for a ruling. To litigate the issue herein would not only be a clear violation of the "single controversy" doctrine, but would also intrude upon the Appellate Division's jurisdiction. This is evident by the fact counsel for plaintiff, in a clear violation of the Court Rules, forwarded the original and two copies of its interrogatories herein to Clerk of the Appellate Division (Da51). Therefore, the within action which is a duplication of the chancery action, should be dismissed.

In addition, the plaintiff herein has subsequently filed an action for damages in the United States District Court for the District of New Jersey, Docket No. 77-1531, against the same defendants and others based upon the same factual and legal contentions raised in the chancery action. Again, he has served a voluminous set

of interrogatories which seek, in part, discovery of the identical information demanded in the matter at bar. It is clear that the plaintiff intends to use the Right to Know Law as a means of avoiding compliance with discovery procedures in the other two actions, an unequivocal violation of the application of the "single controversy" doctrine to *N.J.S.A.* 47:1A-1, *et seq. Irval, supra.*

It is likely that plaintiff will contend that a dismissal will result in some sort of harm. However, all discovery rights and remedies have been preserved by plaintiff in his appeal of the chancery action and are available in the federal court action. The standard for issuance of inspection orders is set forth in *Bzozowski v. Penn-Reading Seashore Lines*, 107 N.J. Super. 467 (Law Div. 1969) at page 473:

> Generally, inspection orders should issue upon proof that the desired inspection of documents will aid a plaintiff in the preparation of his case, or otherwise facilitate proof or progress at trial, or that a denial would prejudice plaintiff.
> [citations omitted].

Clearly no such harm can befall the plaintiff as he has all his rights and remedies in both other matters, and there is no impediment to a dismissal. In fact, if the relief plaintiff demands was granted by the court it would result in a serious imposition upon the State. Not only would the State be required to wastefully expend its energies and resources on a third action involving the same parties regarding the identical records, but there would be a wrongful conversion of the purpose of the

Right to Know Law to a discovery tool. The discovery procedures in the other actions are the proper means of securing production of the records and, the within action should be dismissed. There is absolutely nothing plaintiff can obtain from the within action that he cannot in the other two damage actions.

POINT II

THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE PLAINTIFF FAILED TO COMPLY WITH THE TIME LIMITATIONS OF R. 4:69-6.

An action for an order requiring production of records pursuant to *N.J.S.A.* 47:1A-4 is made by a proceeding in lieu of prerogative writ, such as the matter at bar. Hence, this action was filed in accord with *R.* 4:69-1, *et seq.*, and must comply with the limitations thereof.

The plaintiff's cause of action arose on February 24, 1977, with the denial of access to the requested documents. His request was made upon the recommendation and with the knowledge of counsel, and was within the scope of discovery demands in Docket No. C-2643-73. Pursuant to *R.* 4:69-6(a) the within action should have been commenced on or before April 10, 1977. The complaint was not filed until May 26, 1977, 36 days late. Therefore, the complaint should be dismissed.

State's Brief in Support of Motion, August 11, 1977.

CONCLUSION

For the foregoing reasons, the State submits that the complaint should be dismissed.

Respectfully submitted,

WILLIAM F. HYLAND
Attorney General of New Jersey
By: RICHARD L. VOLIVA, JR.
Richard L. Voliva, Jr.
Deputy Attorney General

DATED: August 11, 1977

William F. Hyland
Attorney General of New Jersey
Attorney for Defendants
1035 Parkway Avenue
Trenton, New Jersey 08625
(609) 292-5948

FILED
May 11 1977
Henry H. Wiley
County Judge
Ocean County

State's Brief in Support of Motion,
August 11, 1977.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, OCEAN COUNTY

Docket No. C-2643-73
CIVIL ACTION

WESLEY K. BELL, t/a WES OUTDOOR ADVERTISING CO.,

Plaintiff,

vs.

JOHN C. KOHL: COMMISSIONER OF TRANSPORTATION: DEPARTMENT OF TRANSPORTATION, STATE OF NEW JERSEY,

Defendants.

ORDER TRANSFERRING TO APPELLATE DIVISION, ETC.

This matter having been opened to the Court on Friday, March 18, 1977, before the Honorable Henry C. Wiley, J.C.C., t/a, by William F. Hyland, Attorney General of the State of New Jersey, attorney for the defendants, Richard L. Voliva, Jr. and Steven A. Tasher, Deputy Attorneys General, appearing, and in the presence of Haines, Schuman and Butz, Esqs., attorneys for plaintiff, Michael Malin, Esq., admitted Pro Hac Vice, appearing, upon defendants' "Notice of Motion for Dismissal of Complaint and Abolishment of all Restraints, or in the Alternative for Summary Judgment,

a Protective Order Barring the Taking of Depositions, and an Extension of the Time Period in which the Defendants may Serve Answers to Interrogatories," and the Court having considered the briefs, affidavits and arguments of counsel, and for good cause shown;

IT IS on this 11th day of May 1977, FINALLY ORDERED that:

(1) Defendants' motion for dismissal of the First and Third Counts of the Complaint on the grounds that jurisdiction lies with the Appellate Division is decided by transferring the First and Third Counts of the action to the Appellate Division pursuant to *R.* 2:2-3(a)(2); and upon the representations of counsel*

(2) The restraints ordered by the Court on May 29, 1974, insofar as they pertain to the First Count, are continued; and

(3) Defendants' motion for dismissal of the Fourth Count of the Complaint seeking to reopen condemnation actions and for damages, is hereby granted with prejudice, as same is barred by *N.J.S.A.* 52:4A-1, *et seq.*, The New Jersey Tort Claims Act, *N.J.S.A.* 59:1-1, *et seq.*, and the operation of the doctrine of *res judicata;* and

(4) The restraints ordered by the Court on May 29, 1974, as they pertain to the Third and Fourth Counts are abolished: and

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* for the State that a record of the administrative proceedings involved exists and is available for review by the Appellate Division, and/or that such a record can be prepared in accordance with the Rules, and . . .

Plaintiff's Brief in Opposition of Motion, September 9, 1977

(5) The restraints imposed upon the prosecution of the condemnation action entitled State of New Jersey, by the Commissioner of Transportation v. Wesley Kenneth Bell, *et als.*, Docket No. L-36137-72 are hereby abolished; and

(6) Plaintiff's crossmotion for dismissal on the grounds that defendants failed to provide discovery is denied with prejudice as being moot in light of the granting of the defendants' motion for dismissal.

HENRY H. WILEY
Henry H. Wiley, *J.C.C.*, t/a

Plaintiff's Brief in Opposition of Motion, September 9, 1977

Richard S. Haines, Esquire
HAINES, SCHUMAN & BUTZ
a Professional Corporation
214 Washington Street
Toms River, N. J. 08753
(201) 349-4400

Michael H. Malin, Esquire
WHITE AND WILLIAMS
17th floor, 1234 Market Street East
Philadelphia, Pa. 19107
(215) 854-7034
Attorneys for Plaintiff

Plaintiff's Brief in Opposition of Motion, September 9, 1977

SUPERIOR COURT OF NEW JERSEY
Law Division, Mercer County

Civil Action
Docket No. L-38402-76 PW

WESLEY K. BELL, Citizen of Manahawkin, Ocean County, N.J.,

Plaintiff,

vs.

STATE OF NEW JERSEY and JOHN C. KOHL, Commissioner of Transportation, State of New Jersey; WILLIAM KINGSLEY, Director Division of Taxation, New Jersey Department of Transportation State of New Jersey,

Defendants.

PLAINTIFF'S BRIEF CONTRA DEFENDANTS' MOTION TO DISMISS

Plaintiff seeks to examine public records in accordance with the Right-to-Know Law. Plaintiff has been attempting to do so from 1967 and until the filing of the within action. Plaintiff's affidavit attached hereto indicates that from February 24, 1977, to the date of the filing of this suit plaintiff and his counsel attempted to obtain the documents. Indeed, they were promised these documents from time to time and never given a definitive answer. Plaintiff has previously instituted a suit in Ocean County (Bell vs. New Jersey Department

of Transportation, which was dismissed and is on appeal) and a few of the documents sought could conceivably be used in that action. However, inasmuch as that action may be dismissed there may be no method of obtaining these documents within any reasonable time. Plaintiff contends that the New Jersey Department of Transportation is attempting to hide evidence of possible malfeasance in office by refusing to disclose these records. This becomes evident by merely reading its statement by Richard L. Voliva which states the action arose on February 24, 1977 when plaintiff demanded the records. This is in fact untrue, since the records had been demanded previously and subsequently, but never produced. The Department, on February 24th claimed it would look into the matter and we would receive a reply from Richard L. Voliva. Now in what appears to be an example of extreme bad faith by Mr. Voliva and the Office of Transportation, it has filed a motion to dismiss stating that it is too late to file the action inasmuch as more than 45 days has elapsed since February 24th. At the same time it complains of not being given enough time to evaluate the request and still fails to produce documents. The letter of Richard L. Voliva of July 1, 1977, indicating the documents would be produced if we would indicate what files we wanted is clear evidence of the bad faith and attempt to lead plaintiff along. According to this theory, the point of request of documents, gives the Department a reasonable time to produce them and if they don't within 45 days, one can never get the documents again by any legal action. This is merely more bad faith, obfuscation and harassment.

Plaintiff's Brief in Opposition of Motion, September 9, 1977

Plaintiff's action herein does not seek production of the same documents sought in the Chancery case which was dismissed. It is substantially different. The plaintiff is a candidate for public office and certain issues with respect to highway zoning are in issue. Plaintiff is also in the outdoor advertising business and needs to know about prior condemnations and planned condemnations, as well as the enforcement of the act in order to properly carry on his business.

POINT I.

THERE IS NO VIOLATION OF THE SINGLE CONTROVERSY DOCTRINE.

The single controversy doctrine is inapplicable in this case inasmuch as the records sought are for public purposes not that of any single lawsuit. *Irval Realty vs. Board of Public Utility Commissioners of the State of New Jersey*, 61 A.J.N.J. 366, was a case where the case was still in the trial court and plaintiff had sought evidence of an extension relative to a particular defendant clearly limited to legal issues and fundamentally of no importance beyond the litigant's interest and where requests for production of documents could be made expeditiously in the lawsuit rather than through the procedures of the right-to-know law. Such is not the case here and inasmuch as assuming that plaintiff's appeal is sustained, which could be more than a year hence, and after other appeals are exhausted, plaintiff could get some information. But there is no existing procedure to get information in the context of the suit in the Appellate Court as such discovery is not

available for an appellate record. Further, the appeal may not be sustained. The lack of similarity can be noted by the arguments made in defendant's brief where it does not claim that interrogatories are identical, only that the records to be produced could conceivably be identical. Accordingly, there can be no claim that this is a single controversy where the information sought can be obtained in another action more expeditiously.[1] "Expeditiousness" is the key and there is no other forum where plaintiff could go to get such records. In any event it involves matters of public interest not merely of litigant's interest.

In addition, the single controversy doctrine applies only to the same sovereignty. The pending District Court suit only involves only a few of the same defendants and the issues are entirely different and they have little or nothing to do with the issues raised in the Chancery Division as the defendants so cavalierly state. The other defendants in that suit include various township officials, former county prosecutors, a number of state highway engineers and other defendants. In addition, it concerns matters which took place in the last three or four years and the issues are only tangentally the same. In addition, plaintiff has been advised that the state will also seek dismissal of the federal action, in which event there would be no method of expeditiously obtaining public

[1] An illustration of how facetious defendant's position is, is the claim that interrogatories went to the Clerk of the Appellate Division via a filing error. Obviously, they are inconsequential in that action and can have nothing to do with it and do not in any way show an identity of the actions inasmuch as defendant need not make discovery in an appellate case.

records which are supposed to be publicly available to the voters under the principle of open government.

Plaintiff will sustain serious harm and the public interest will sustain harm if the statute of limitations runs on people who are guilty of malfeasance in office or the waste of public funds for failing to abide by zoning and building restrictions on condemning properties for other than public purposes. Further, plaintiff will be harmed inasmuch as he will not know how to conduct his business in order to comply with the strictures of the Outdoor Advertising Act as administered.

POINT II.

MOTION TO DISMISS FOR FAILURE TO ABIDE THE SO-CALLED 45 DAY STATUTE OF LIMITATIONS IS INAPPROPRIATE.

Prior to April 10, 1977 and indeed, prior to May 10, 1977, the State had never made a definite refusal, but merely said the documents were on hand and Mr. Voliva would get in touch with plaintiff's counsel. Mr. Voliva never did so until the suit was filed. Further requests were made on a weekly basis for them to the State to determine the status of the requests. The State has waived any claim indeed by the letter of Richard L. Voliva attached hereto of July 1, 1977. In any event such is a legal question to be determined at the trial of the case not by a sole speaking demurrer. However, with respect to a demand for public documents, an action should be deemed to accrue every day when the records

once demanded are not produced. Indeed the suit itself is a renewed demand and accordingly the 45 day rule is inapplicable.

Respectfully submitted,

HAINES, SCHUMAN & BUTZ
By s/ RICHARD S. HAINES

WHITE AND WILLIAMS
By s/ MICHAEL H. MALIN
Attorneys for Plaintiff

Affidavit of Wesley K. Bell, September 9th., 1977

Richard S. Haines, Esquire
HAINES, SCHUMAN & BUTZ
a Professional Corporation
214 Washington Street
Toms River, N. J. 08753
(201) 349-4400

Michael H. Malin, Esquire
WHITE AND WILLIAMS
17th floor, 1234 Market Street East
Philadelphia, Pa. 19107
(215) 854-7034
Attorneys for Plaintiff

Affidavit of Wesley K. Bell, September 9th., 1977.

SUPERIOR COURT OF NEW JERSEY
Law Division, Mercer County

Civil Action
Docket No. L-38402-76 PW

WESLEY K. BELL, Citizen of Manahawkin, Ocean County, N. J.,

Plaintiff.

vs.

STATE OF NEW JERSEY and JOHN C. KOHL, Commissioner of Transportation, State of New Jersey, WILLIAM KINGSLEY, Director, Division of Taxation, New Jersey Department of Transportation, State of New Jersey,

Defendants.

AFFIDAVIT OF WESLEY K. BELL

STATE OF NEW JERSEY }
COUNTY OF } ss

WESLEY K. BELL, being duly sworn according to law, deposes and states as follows:

1. I have read the brief in support of the Motion to Dismiss and the Motion to Dismiss in the above matter.

Affidavit of Wesley K. Bell, September 9th., 1977.

2. The allegations that this matter is identical in any way with any other suits are totally erroneous. It is to be noted that such statements are unsupported statements of counsel and without affidavit and I am advised that they are an improper speaking demurrer.

3. I am a resident of Route #72, Stafford Township, Ocean County, New Jersey the area for which I seek information.

4. I am a candidate for the Stafford Township ~~Council~~ (Committee W.K.B.) and I am the former Mayor of Stafford Township. The issues involved are public issues for which I seek information.

5. I am currently involved in the outdoor advertising business along Route #72.

6. The records sought are for the purpose of determining the propriety of actions of the State and Township officials in connection with zoning and planning along Route #72 and to further determine if State and Federal funds were properly expended.

7. Prior to February 24, 1977, I had made numerous verbal requests to see the state records pertaining to condemnations and acquisitions along Route #72 going back to 1967.

8. I made numerous verbal requests and inquiries after February 24th and was advised including having received advice from Richard L. Voliva, Jr., Deputy Attorney General via my counsel that such papers would be produced. Such obviously was an attempt to keep me from filing this action so that defendant would have some kind of legal ground for delaying ~~the~~ (and W.K.B.)

BEST AVAILABLE COPY

objection (ng W.K.B.) to the opening of a public record. A copy of the letter from Richard L. Voliva, Jr., Deputy Attorney General of the State of New Jersey to my counsel is attached hereto. I was not specifically denied the records on February 24th only told they were not available and to ascertain from Richard L. Voliva when and if they would be available.

9. However, such was followed by numerous calls by me and my counsel during the period of March, April and May of 1977, to various people in the Department of Transportation to see the records.

10. In view of what I believe to be an unreasonable enforcement policy with respect to outdoor advertising and in view of the fact that I am in the outdoor advertising business in the area in question, I seek to determine what that policy is and how it has been implemented so that I may determine how I may comply with it or if other competitors are in fact complying with the policy and the outdoor advertising regulations are being enforced as to such other competitors and further if there is compliance with local building and zoning codes and regulations.

11. I have recently been served with violation notices with respect to signs I purchased from a competitor and it appears that such citations are not served on competitors only on the undersigned and that other competitors with possible similar violations, *i.e.* improper designation of sign owner are not made on others. I need to learn the extent of such enforcement policy to determine how I should proceed in my business or indeed if I can continue in business. It is therefore imperative

that I have such information at the earliest possible moment. Delay is prejudicial both to me and to the public interest.

/s/ WESLEY K. BELL

Sworn and subscribed to before me
this 9th day of September, 1977.
Agatha Rocchia
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 8, 1978.

Judgment Dismissing Right-to-Know Complaint, September 16, 1977

William F. Hyland
Attorney General of New Jersey
Attorney for Defendant
1035 Parkway Avenue
Trenton, New Jersey 08625
(609) 292-5520

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY
Docket No. L-38402-76 P.W.

CIVIL ACTION

Judgment Dismissing Right-to-Know Complaint, September 16, 1977.

WESLEY K. BELL, Citizen of Manahawkin, Ocean County, N. J.,

Plaintiff,

vs.

STATE OF NEW JERSEY; *et al.*,

Defendant.

JUDGMENT DISMISSING COMPLAINT

This matter being opened to the court by William F. Hyland, Attorney General of the State of New Jersey, attorney for defendants, by Richard L. Voliva, Jr., Deputy Attorney General, and Barbara Van Horn Cokey, Esq., attorney for plaintiff, appearing, and the court having heard arguments of counsel, reviewed the briefs in the within matter, and for good cause shown;

IT IS on this 16th day of September, 1977, ORDERED that judgment be entered dismissing the complaint in the within matter ~~with~~ (w/o) prejudice.

/s/ GEORGE Y. SCHOCH
A. J.S.C.